

## Minutes of the August 27, 2010 Regular Council Meeting

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Call to Order and Flag Salute at 3:30 pm by Mayor Serio.

Council in Attendance: Weistling, Serio, Carmean, Bunting, Smallwood, Tingle and Langan  
Absent: None

### President's Report

- Mayor Serio reported that the town has received \$215,000 from the State of Delaware against the cost to purchase the lot on West Cannon Street.
- Mayor Serio introduced new staff member, Lynn Massey, who will be the administrative assistant/police clerk.
- Mayor Serio announced that citizens may apply for membership in the Town's committees. Forms are available on line and at town hall. Applications are due no later than 9/30/10; appointments will be announced at the October council meeting.
  - A new task force will be formed to work with Council, the Environmental Committee and the Planning Commission to formulate a plan for developing the lot on West Cannon Street. It will be composed of 10-12 members with Mayor Serio as Chair.
  - Members will also work with the Public Safety Building task force.
  - New appointments to be made to commissions: Board of Adjustments (1); Planning Commission (3); Board of Elections (1).

### Topics for Discussion and Possible Action

#### a. Resolution #47-2010 Renaming of Virginia Avenue Extended and Bay Street – Mayor Serio

Motion to adopt – Council Member Tingle

Second – Council Member Langan

#### DISCUSSION

Mayor Serio read the resolution into the record noting that Bay Avenue is being changed not Bay Street. The Resolution will reflect this correction. Mayor Serio noted that she resolved the naming issue on Virginia Avenue Extended and that Bay Avenue property owners met to decide the name for their street.

Vote: All in favor (7-0)

**Resolution #47-2010 Renaming of Virginia Avenue Extended and Bay Avenue - accepted**

#### b. Update on Public Service Building Preliminary Design Phase – Council Member Langan

Council Members Langan and Weistling advised that soil borings have been completed and the town is waiting for the results. The Building Committee will meet with the architect to refine drawings and determine the cost of the building. Currently, both a one- and two-story structure are under consideration.

#### DISCUSSION

- Peter Frederick (1605 Bunting Ave) – asked what constant is being used. Council Member Langan advised that cost is the constant; Council Member Weistling noted that the Chief of Police's needs, square footage and future needs are also factors.
- Buzz Henifin (48 Windward Way) – asked if additional parking (under the building if placed on pilings) is being considered. Council Member Langan advised that there does not appear to be a loss of parking since a Cannon Street entrance will be available.

### Approval of Minutes:

Motion to Approve the Minutes of July 23, 2010 Meeting - Council Member Carmean

Second: Council Member Smallwood

#### DISCUSSION –

- Council Member Smallwood advised that Mr. Banziger's request for council approval to hold a block party on Saturday, September 4, 2010 should be changed to Sunday, September 5, 2010 beginning at 6:00 PM on King Street due to a conflict with the band.
- Council Member Weistling noted that copy of Resolution # 45-2010 appears incorrect and asked that the Town Clerk make the correction.

Vote: All in favor to approve minutes with the noted corrections (7-0) - Minutes Approved

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## **Treasurer's Report:**

Council Member Bunting noted that the financial report is included in the council meeting packet. The Town Annual Audit has been delayed until August 30, 2010.

Motion to Accept the Treasurer's Report - Council Member Carmean

Second - Council Member Langan

DISCUSSION – None

Vote: All in favor (7-0)

Treasurer's Report accepted.

## **Town Manager Report:**

- Town Manager Abbott advised that Town Hall has received calls regarding trash service. He has contacted Moor Disposal and all problems appear to be resolved.
- Sposato Landscaping has been retained for landscape maintenance.
- DNREC dune fence repairs have been completed.
- Reallocation of all funds is complete.

## **Department Reports:**

- Beach Patrol –Tim Ferry; report in the Council packet
  - Mr. Ferry added that the ATV and beach wheelchair have been used approximately 160 times this summer.
  - The beach patrol is fully staffed for the next two weekends; the patrol is short-staffed during the week.
  - The beach patrol is monitoring closely developing weather systems.
    - Mayor Serio questioned if the beach will be closed during the week if surf conditions are rough and the patrol is short-staffed. Captain Ferry advised that the beach will not close but that stands will be moved so as to provide more effective coverage with fewer staff.
    - Council Member Smallwood commended the beach patrol in its performance at the National Competition. Captain Ferry advised that, when competing nationally, Fenwick Island Beach Patrol joins other local area guards to compete as Sussex County patrol. Combined, the patrol returned with two national, two silver and one bronze in the last five years of competing. This is a team of veteran lifeguards.
    - Council Member Carmean asked about the Lifeguard of the Year award given by the Bethany-Fenwick Chamber of Commerce. Captain Ferry congratulated Colin Madden for being selected by his team mates as Lifeguard of the Year. Madden is a quiet leader and a great athlete.
    - Council Member Weistling asked if the increased use of the ATV/ beach wheelchair show an increase in need or abuse. Captain Ferry advised that it appears to be an increase in need although he does not have exact usage figures from prior years. Word of mouth and a notation on the Town website of the availability of the wheelchair seems to have increased awareness and thus increased the demand. In response to a question from Council Member Smallwood, Mr. Ferry believes that three wheelchairs are sufficient.
    - Council Member Carmean asked the status of the lifeguard stands. Captain Ferry reported that damage to some stands appeared to be due to vandalism more than age. Public Works does a good job maintaining the stands.
- Building Official – Pat Schuchman noted that her report is included in the council packet.
- Public Works: Mr. Abbott noted that the report is included in the council packet. The Public Works Department staff has been reduced to three: Dan Heller, Bryan Reed and James Parnell. They have taken the initiative on a few projects including electrical work for the PA system, repairing shingles on the roof of Town Hall and conducting a preliminary survey of properties to formulate a debris management program.
- Fenwick Island Police Department: Chief Boyden noted that his report is included in the council packet. Chief Boyden added that his department has been awarded a \$20,000 Sussex County Council grant pending that council's final approval. Mayor Serio thanked the Chief for staying on top of available grants.

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## Committee Reports:

- Beach Committee –Council Member Smallwood advised that the Coastal Cleanup is scheduled for Saturday, September 25, 2010. He will contact Jennifer Wilson at DNREC for more information regarding a Point of Contact. Lynn Andrews advised that the Fenwick Island Society of Homeowners (FISH) will assist again to clean the area from Dagsboro to Lewes Streets. Council Member Smallwood noted that the Barefoot Gardeners and the Lions also participate annually. You must sign up in advance on line in order to get a t-shirt.
- Environmental Committee –Council Member Carmean advised that there was a joint meeting in August of the Environmental Committee and the Parks and Recreation Advisory Group. Mayor Serio has been advised of the members' concerns regarding development of plans for the West Cannon Street Park. Council Member Carmean praised Buzz Henifin for his untiring efforts in tracking the local water quality. There is no meeting planned for September.

**Planning Commission:** Report included in the Council packet

## Charter & Ordinance:

- Proposed First Reading of Chapter 142 – Subdivision of Land – Council Member Weistling

Motion to accept – Council Member Weistling

Second - Council Member Carmean

Council Member Weistling advised that the proposed change affects 142-4 Violations and Penalties replacing

**violators shall be subject to a fine of not less than five hundred dollars (\$500.) and not more than two thousand five hundred dollars (\$2,500.)** with **violators shall be subject to a fine of five hundred dollars (\$500.).**

DISCUSSION – Council Member Weistling noted that this change complies with advice of Town Solicitor to stipulate a definite fine.

Vote to accept the Proposed First Reading of Chapter 142 – Subdivision of Land: (7-0)

First Reading passed

- Proposed First Reading of Chapter 153 – Vehicles and Traffic – Council Member Weistling

Motion to accept – Council Member Weistling

Second – Council Member Carmean

Council Member Weistling advised that the proposed change replaces the current Chapter 153 – Vehicles and Traffic in its entirety with the proposed change (included at the end of these minutes).

DISCUSSION – Much of the wording remained but changes 153-1 Fine change to \$100; 153-2 unchanged; 153-3;

unchanged; 153-4 and 153-5 reversed order so that violations and penalties are last item listed and the fine is

consistent. Council Member Bunting asked how the change affects trucks making deliveries; Council Member Weistling advised that it does not since signage is already in place.

- Discussion of Chapter 160- Zoning (Residential Use Requirements) – Council Member Weistling

Council Member Weistling advised that, in a departure from normal procedure, the C&O Committee intends to seek public and council input prior to formulating changes to this chapter. Council Member Weistling stated that the C&O

Committee wants to improve the existing Chapter wording regarding commercial use in a residential zone. Mr. Weistling presented for consideration a copy of definitions which the committee has developed to serve as discussion starters (copy attached). The committee has explored code from other communities but has chosen to be less restrictive and, instead, to specifically address trouble-some properties.

- Mayor Serio noted that the Town Solicitor recommended that the committee set a goal and determine what it intends to accomplish before formulating final changes to the ordinance. Council Member Weistling added that a reading of definitions offered shows an attempt to define gatherings as “not-for-profit” and Mayor Serio advised that this would provide legal with a basis to form an opinion if it is a defined goal.
- Council Member Carmean advised that committee members want to strike a balance so that the change does not infringe on property owner and renter rights. Council Member Weistling added that a recent wedding on Bunting Avenue serves as an example of those events which do not present problems further adding that Council cannot try to eliminate all special events.

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## PUBLIC COMMENT

- Lynn Andrews (1205 Schulz Rd) – noted that the recent wedding on Bunting Avenue is an example of a normal request and was a one-time event. Mrs. Andrews does not want business allowed in the residential area. Mayor Serio advised that Council must spell out what it wants so that there is a policy for the police department to follow.
- Ben Waide (2 W Dagsboro St) – questioned the definition of rental dwelling. He cited recent discussions regarding residential units above commercial establishments and asked if there is a separate ordinance to address that. Council Member Carmean advised that a different code exists for commercial zoned properties.
- Peter Frederick (1605 Bunting Ave) – noted that residential and commercial areas are distinct and defined. He advised that the owner of a property must obtain a rental license and that this is the only allowable use in a residential area. The property owner is responsible for the property and can use it in any manner provided there is no exchange of money. Mayor Serio and Council Member Carmean advised that the ordinance is not explicit and requires examination. Mr. Frederick noted that there is a list of permitted businesses (by ordinance) that should serve to restrict business activities to the commercial area only. Council Member Carmean advised that the ordinance which specifies prohibited business activities applies to the commercial zone and there is nothing defined for the residential zone. Mayor Serio added that this appears to be an area of concern which the Council must address. Mr. Frederick suggested that no commercial activity be allowed in the residential zone. Mayor Serio advised that previous discussions show that there may be a need for regulation and that Council must address it even if the final result does not reflect a change. Council Member Weistling noted that a community in North Carolina is contesting a case that was similar to the recent “wedding house” incident in Fenwick Island; this points out a need to be pro-active and to address the problem in Fenwick Island. Mayor Serio added that the town’s recent problem concerned advertizing the property as a commercial entity. Council Member Smallwood suggested that a “tiered-pricing” structure might resolve a part of the problem.
- Mary Pat Kyle (1205 Bunting Ave) – noted that there is a maximum occupancy of 12 should be changed to maximum overnight occupancy of 12 and that council might add “no commercial use” to the list of permitted use in the residential zone. Council Member Weistling advised that language would exclude home businesses.
- Peter Frederick (1605 Bunting Ave) – asked if caterers are required to have a town business license. Building Official Schuchman advised that she has never had a business license application for a caterer; Mayor Serio noted that they do not require one.
- Council Member Weistling asked for the public to direct its ideas to the C&O Committee. Mike Quinn invited the public to put their ideas in writing and to attend the next meeting on September 7, 2010 at 9:30 AM. Mr. Weistling noted that the committee is now beginning its review of Chapter 160 (Zoning). Mayor Serio advised that the committee may need to consider a “park” zone in the future; Council Member Weistling added that a “park” in the residential zone currently is not an allowable use. Mary Pat Kyle asked if there will be an effective date for the zoning changes; Council Member Weistling responded that the public will be given adequate notice.

## Old Business:

- Fenwick Island Police Department Extra Duty Pay Policy – Council Members Carmean and Smallwood  
Council Member Smallwood advised that the policy has not been finalized. Council Member Carmean added that Chief Boyden has been in touch with other towns and with the Commission on Accreditation for Law Enforcement Agencies (CALEA) regarding regulations for extra duty. Additional research is required. A policy will be made a part of FIPD regulations and/or the personnel manual. ~~Mrs. Carmean noted that they will research a policy on outside jobs so that any outside agency should have a mutual aid agreement before hiring a current Fenwick Island Police officer.~~ Chief Boyden advised that membership in CALEA is expensive. Bethany Beach Police Department is a member and has offered to share some of the policies with FIPD.

## New Business – No Action to be Taken: Mayor Serio

Council Member Weistling gave an update on the 2010-11 Street Resurfacing Project. Six streets have been identified as needed immediate attention. A bid advertisement has been published. A mandatory pre-bid meeting will be held on September 7, 2010. Bids will be opened on September 16, 2010; a special council meeting with Kercher Engineering will be held on or about September 21 or 22 at which time a bid may be approved. Work should begin in mid-October 2010.

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## **Public Participation:**

- Lynn Andrews (1205 Schulz Rd) – thanked council for its time and effort and asked if council would consider looking into using “mobi mats” for the beach crossings. Council Member Tingle advised that they are very expensive; Council Member Bunting believes they are \$10,000 - \$15,000 each. Council Member Weistling asked if someone was aware of the manner in which Bethany Beach was handling their mats and if the sand tends to cover them after time. Council Member Bunting suggested trying one for the summer months only and that he does not object to researching them.
- Buzz Henifin (48 Windward Way) – thanked Council Member Carmean for her kind words regarding his work on water quality sampling. Mr. Henifin noted that DNREC has posted a notice against swimming in the Little Assawoman Bay.
- Laura Phillips (3 E Cannon St) – asked if the property on Cannon Street can be designated as a park. Council Member Weistling advised that the park designation was resolved by the Town Solicitor. Mayor Serio noted that a task force will be set up for those who wish to be a part of the park plan development.
- Ben Waide ( 2 W Dagsboro St) – thanked those pedestrians who were involved last week in a water rescue. They seemed to be medical personnel and were able to stabilize the victim before the paramedics could respond. He does not know who they are.

## **Upcoming Events and Meetings:**

Mayor Serio announced all meetings and events.

Motion to Adjourn: Council Member Weistling

Second: Council Member Bunting

All in favor to adjourn (7-0)

Mayor Serio adjourned the meeting at 4:50 PM.

Respectfully submitted,

Agnes DiPietrantonio, Town Clerk

For Diane Tingle, Secretary

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*Proposed First Reading – August 27, 2010*

## Chapter 142, SUBDIVISION OF LAND

### EXISTING:

#### § 142-4. Violations and penalties.

The commencement of any subdivision or development of land or real property or rearrangement of lots, or the selling of lots in such proposed subdivision or development or rearrangement prior to obtaining the approval of the Town Council of Fenwick Island, Delaware, shall be a violation of this chapter, and violators shall be subject to a fine of not less than five hundred dollars (\$500.) and not more than two thousand five hundred dollars (\$2,500.). Each day that any such violation shall exist shall constitute a separate offense.

### PROPOSED:

#### § 142-4. Violations and penalties.

The commencement of any subdivision or development of land or real property or rearrangement of lots, or the selling of lots in such proposed subdivision or development or rearrangement prior to obtaining the approval of the Town Council of Fenwick Island, Delaware, shall be a violation of this chapter, and violators shall be subject to a fine of five hundred dollars (\$500.). Each day that any such violation shall exist shall constitute a separate offense.

*Proposed First Reading – August 27, 2010*

### Replace In Its Entirety:

## Chapter 153, VEHICLES AND TRAFFIC

### GENERAL REFERENCES

Parking -- See Ch. 112.

#### § 153-1. Authority to establish limits; penalty.

In order to avoid damage to the streets of Fenwick Island, the Town Council is hereby authorized to establish weight limits for vehicles operating upon said streets. Such limits may vary from time to time and from street to street, taking into account the condition of the surface and subsurface of each street and weather conditions and other conditions affecting the ability of the street surface to withstand damage from vehicular traffic. Signs giving notice of such weight limits shall be erected along any street to which such limits are applicable in locations suitable to give reasonable notice of such limits to persons using such streets. Any person who shall, on such a street, operate a vehicle having a weight in excess of the weight limit established for such street pursuant hereto shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined \$100.

#### § 153-2. Establishment or change of limit by Council.

When any such limit is established by the Town Council, a majority of the members of the Council present and voting at any regular or special meeting thereof may reduce, increase or cancel any such limit. In the event of such a reduction or increase, appropriate change shall be made in any sign giving notice of the limits applicable to the streets affected by such change.

#### § 153-3. Establishment of truck weight limit.

Trucks in excess of 5 tons gross vehicle weight are confined to Route 1 and the Commercial Zone, unless the destination is within the Residential Zone.

#### § 153-4. Posting of signs; enforcement.

Traffic signs will be posted in accordance with the intent of this Chapter, and this Chapter will be enforced within three (3) months after enactment.

#### § 153-5. Violations and penalties.

The fine for violation of this Chapter is \$100.



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At the August C&O Meeting, we discussed changes to our Zoning ordinance regarding special events in a residential district such as weddings, receptions, reunions, parties, etc. The committee felt that they did not want to place harsh restrictions for private homes that would affect both rental homes and homes occupied by property owners. Rather than restrict specific activities, we came up with a definition of "Special Events in a Residential Zone". Read below and give some consideration to the definition before the C&O committee forwards this onto the town attorney. The next step after the attorney's review would be to send to Council for a first reading.

Also, if you have any other changes you'd like to see or other suggestions, we can discuss these at the next C&O meeting.

In addition, below is a definition of "residential rental dwelling unit" that we believe needs to be added to the ordinance.

Again, read it and let us know if we've covered everything. We will discuss both items at the next council meeting.

See below:

### Residential Rental Dwelling Unit (Residential Zone):

Any building, or portion of a building in which a person/persons resides in which consideration of money is paid to the owner of such building or the owner's/owners' authorized representative or other such person. Such rental will be for a certain period of time for non-commercial uses unless such uses are defined by ordinance. A maximum of 12 people may occupy the unit at any time. All property owners of such units must obtain a rental license from the Town.

### Special Event (Residential Zone)

Is defined as an event, celebration, or gathering on private property in the Residential Zone that is not for profit and involves the property owner/owners' or renter/renters' relatives, close friends, or family to celebrate or hold such an event such as, but not limited to, birthdays, graduations, weddings, reunions, anniversaries, and receptions. These events would be typical of residential neighborhoods that would have no business or commercial orientation and not requiring any special needs such as major liability insurance, security, liquor license, or other needs typical to business, commercial, or occupational uses.